

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

REBA L. MCINTYRE,)	
)	
Petitioner,)	
)	
v.)	No. 1:12CV00007 ERW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on petitioner’s “petition for review of sentence pursuant to 18 U.S.C. § 3742.” The petition will be summarily denied.

Background

On March 27, 2000, petitioner pled guilty to one charge of possessing five grams or more of cocaine base with intent to distribute. On June 26, 2000, the Court sentenced petitioner to 262 months’ imprisonment. Petitioner did not file a direct appeal. See United States v. McIntyre, 1:99CR00064 ERW (E.D. Mo.).

On October 2, 2000, petitioner filed her first motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. On July 6, 2001, the Court denied the motion on the merits. See McIntyre v. United States, 1:00CV00124 ERW (E.D. Mo.).

On November 29, 2004, petitioner filed a second motion to vacate under § 2255. The Court transferred the motion to the Eighth Circuit Court of Appeals. See McIntyre v. United States, 1:04CV166 ERW (E.D. Mo.).

Discussion

Petitioner seeks relief pursuant to 18 U.S.C. § 3742. Petitioner maintains that when she was sentenced her criminal history was incorrectly calculated, resulting in an unlawful sentence.

Section 3742 does not provide the relief petitioner seeks. The section authorizes a defendant or the government to file a notice of appeal with the appropriate court of appeals to challenge sentences on the basis that they are unlawful, that the guidelines were incorrectly applied, and for other reasons. 18 U.S.C. § 3742(a)-(b). Petitioner did not file a timely appeal, and no provision of law permits petitioner to file a notice of appeal at this time. As a result, the petition must be denied.

The Court notes that it would be fruitless to recharacterize the petition as a motion to vacate under § 2255. Under 28 U.S.C. § 2255:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense . . .

Absent certification from the United States Court of Appeals, this Court lacks authority under § 2255 to grant petitioner relief. In other words, if petitioner intends to bring a § 2255, she must first file it with the Eighth Circuit Court of Appeals.

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis [Doc. 2] is **GRANTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED**.

An Order of Dismissal will be filed contemporaneously with this Memorandum and Order.

So Ordered this 18th day of January, 2012.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE